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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JERRY PEACOCK, Individually And On Behalf of All Others Similarly Situated, Plaintiff, v. DUTCH BROS INC., JONATHAN RICCI, and CHARLES L. JEMLEY, Defendants.	Case No. 1:23-cv-01794-JLC-PAE

AMENDED COMPLAINT FOR VIOLATION OF FEDERAL SECURITIES LAWS

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1. Lead Plaintiff Douglas Rein ("Plaintiff"), individually and on behalf of all other persons similarly situated, by and through his undersigned attorneys, alleges the following based upon personal knowledge as to Plaintiff and Plaintiff's own acts, and upon information and belief as to all other matters. This investigation included, but was not limited to, a review and analysis of: (i) court records; (ii) public filings of Dutch Bros, Inc. ("Dutch Bros" or the "Company") with the U.S. Securities and Exchange Commission ("SEC"); (iii) transcripts and investor presentations; (iv) Dutch Bros' press releases and other investor materials; (v) analyst reports and independent media reports regarding Dutch Bros, its stock price movement, pricing, and volume data; and (vi) interviews of persons with knowledge of the allegations contained herein, including a former employee of Dutch Bros. Lead Counsel's investigation into the factual allegations contained herein is continuing, and many of the relevant facts are known only by Defendants or are exclusively within their custody or control. Plaintiff believes that additional evidentiary support will exist for the allegations set forth herein after further investigation and after a reasonable opportunity to conduct discovery.

OVERVIEW

2. Plaintiff brings this federal securities class action asserting violations of Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t(a), and Rule10b-5(b) promulgated thereunder by the U.S. Securities Exchange Commission (the "SEC") (17 CFR § 240.10b-5), on behalf of himself and all others who purchased the securities of Dutch Bros between November 10, 2021 and May 11, 2022, inclusive (the Class Period"), against Dutch Bros, Chief Executive Officer Jonathan Ricci, and Chief Financial Officer Charles L. Jemley (collectively, "Defendants").

3. At the time Dutch Bros closed its Initial Public Offering on or about September 17, 2021, skyrocketing inflation and commodities costs were wreaking havoc on the U.S. and world

economies. In fact, on September 14, 2021, the same day Dutch Bros began trading on the New York Stock Exchange ("NYSE"), the U.S. Bureau of Labor Statistics revealed the Consumer Price Index for All Urban Consumers ("CPI-U") had increased 5.3% year-over year in the month of August, leading experts and economists to doubt Federal Reserve Chair Jerome H. Powell's previous refrain that elevated inflation was likely "transitory." As Defendant Jemley would later admit, rising petroleum and food commodities prices began to rise rapidly in the second half of 2021, several months before Dutch Bros' IPO. And this landscape did not change prior to the beginning of the Class Period—in fact, it got worse. Indeed, inflation and relevant commodities prices would continue to rise during the Class Period steadily and predictably:

	CPI-U Inflation:	**National All-Milk Price Received (per cwt):**	**2022 All-Milk Price Forecast (per cwt):**	**Gasoline Average Retail Price (per gallon):**	**Diesel Average Retail Price (per gallon)**
September 2021:	5.4%	$18.30	$18.40	$3.272	$3.384
October 2021:	6.2%	$19.60	$19.20	$3.384	$3.612
November 2021:	6.8%	$20.70	$20.25	$3.491	$3.727
December 2021:	7.0%	$21.70	$20.75	$3.406	$3.641
January 2022:	7.5%	$23.90	$22.60	$3.413	$3.724
February 2022:	7.9%	$24.50	$23.55	$3.611	$4.032
March 2022:	8.5%	$25.60	$25.05	$4.322	$5.105
April 2022:	8.3%	$27.00	$25.80	$4.213	$5.120

Sources: U.S. Department of Labor, Bureau of Labor Statistics; U.S. Department of Agriculture, National Agricultural Statistics Service & Agricultural Marketing Service; U.S. Department of Energy, U.S. Energy Information Administration

4. Despite these realities, when Defendants announced Dutch Bros' 3Q21financials and results of operations at the onset of the Class Period, they unexpectedly and falsely assured the market that the Company was not being meaningfully impacted by these macroeconomic pressures and that margins would remain healthy moving forward. In fact, during the November 10, 2021 earnings call, one analyst from Barclays Bank PLC, seeming somewhat surprised, commented that Defendants had "gone through [their] entire set of prepared remarks, and there

was no mention of your basket of commodity or labor inflation in the third quarter or your expectations going forward." Defendant Ricci also asserted the Company had opened more new stores than projected—the most it had ever opened in a quarter ever, in fact, "*despite* the well-documented industry supply chain challenges." And Defendant Jemley told analysts Dutch Bros simply wasn't "nearly as subject…to the types of inflationary pressures that others are having…. And inflation, overall, it's very mild and tempered."

5. Moreover, on March 1, 2022, two-thirds of the way through the Company's first quarter of 2022, Dutch Bros held a conference call to discuss its 4Q21 and full year 2021 results in which Defendants made numerous statements reassuring investors that the Company's first quarter of 2022 results would be positive and that the Company's margins were healthy and not being compressed (and thus were not being meaningfully impacted by rising commodity prices and inflation). "[W]e are feeling good as we enter '22 with the trajectory of our margins, given everything going on," said Defendant Ricci. Similarly, Defendant Jemley stated, "[W]e're just not feeling compression in margins."

6. Notably, Defendants had good reason to reassure the market. Under the terms of the IPO, Dutch Bros' executive officers were subject to a "Lock Up Agreement" with the Company's Underwriters whereby they were prohibited from selling their Dutch Bros stock until approximately March 4, 2022. Had Defendants revealed the true extent to which Dutch Bros' business was affected and would be affected by skyrocketing inflation and rising commodities prices (as peer companies such as Starbucks had done), they would have been unable to maintain the inflated price of Dutch Bros' stock long enough to enable the Individual Defendants to profit to the tune of ***$10,577,443.17***. And profit they did.

7. In fact, just two days after the Individual Defendants suspiciously stopped selling their stock for handsome profits, Defendants shocked the market by revealing, on May 11, 2022, that rising inflation and commodities prices had decimated the Company's projected earnings and margins in the first quarter of 2022, despite their earlier reassurances two-thirds of the way through that quarter that this would not be the case. Investors were stunned. On this news, Dutch Bros' share price fell $9.26, or 26.9%, to close at $25.11 per share on May 12, 2022, on unusually heavy trading volume.

8. As a result of Defendants' false and misleading statements and omissions, and the precipitous decline in the market value of the Company's securities that resulted therefrom, Plaintiff and other Class members have suffered significant losses and damages.

JURISDICTION AND VENUE

9. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

10. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, Section 27 of the Exchange Act (15 U.S.C. § 78aa).

11. Venue is proper in this District pursuant to Section 27 of the Exchange Act, 28 U.S.C. § 1391(b). Defendant Dutch Bros' common stock is listed for trading on the New York Stock Exchange (NYSE). Substantial acts in furtherance of the alleged fraud and/or the effects of the fraud have occurred in this Judicial District.

12. In connection with the acts, transactions, and conduct alleged herein, Defendants directly and indirectly used the means and instrumentalities of interstate commerce, including the United States mail, interstate telephone communications, and the facilities of the NYSE, a national securities exchange.

PARTIES

I. Plaintiff

13. Plaintiff, as set forth in the attached Certification and Declaration at ECF No. 14-4, which is incorporated herein by reference, purchased the Company's securities at artificially inflated prices during the Class Period and was damaged by the federal securities law violations and false and/or misleading statements and/or material omissions alleged herein.

II. Defendants

14. Defendant Dutch Bros is incorporated under the laws of Delaware with its principal executive offices at located in Grants Pass, Oregon. Dutch Bros' shares trade on the NYSE under the ticker symbol "BROS."

15. Defendant Jonathan Ricci ("Ricci") was, at all relevant times, the President and Chief Executive Officer ("CEO") of Dutch Bros.

16. Defendant Charles L. Jemley ("Jemley") was, at all relevant times, the Chief Financial Officer ("CFO") of Dutch Bros

17. Defendants Ricci and Jemley are sometimes referred to herein as the "Individual Defendants."

CONFIDENTIAL WITNESSES

18. Confidential Witness 1 ("CW1") worked at Dutch Bros from 2017 to November 2022, and held several roles during his tenure, including Retail Optimization Manager and Retail Innovations Specialist. From January 2021 until November 2022, CW1 was a Retail Optimization Manager based at the Company's Grants Pass, Oregon headquarters, and was an Innovations Specialist on the same team for about one year prior to that role. In the role of Retail Optimization Manager, CW1 reported to the Director of Retail Services, who in turn reported to the Senior Director of Planning, and CW1 believed that the Senior Director of Planning reported to Chief

Operating Officer ("COO") Brian Maxwell; however, at some point, another layer of reporting was added with the Senior Vice President of Operations.

19. In the role of Retail Optimization Manager, CW1 and CW1's team, which consisted of four people and an intern, oversaw field testing and product innovation, and worked as consultants for the Company's retail shops. Specifically, CW1's team worked on new product implementation within retail shop operations, worked on operational changes that would be effective in the field, and created processes for field training. In sum, CW1's team was mostly responsible for designing processes that would create efficiencies at the retail store-level.

20. Notably, CW1 explained that Dutch Bros was not a siloed company, and as such, people from various departments worked on projects together. For instance, CW1 had access to some financial reporting and cost information, especially as it related to dairy costs.

21. Although CW1 was not directly involved with decision-making or day-to-day operations, CW1 recalled that in or around December/late 2021, CW1's team was tasked with troubleshooting the issue of rising dairy costs to figure out how to reduce these rising costs. For example, one solution that CW1's team came up with was to switch from purchasing dairy by the gallon to purchasing it by the half gallon. CW1 also noted that finding additional sources of dairy, especially 2%, was important because the supply was also an issue around this time, not just the cost.

FACTUAL BACKGROUND[1]

I. Dutch Bros Goes Public at a Time when Inflation is Running Rampant and Commodities Prices Were Skyrocketing

22. Founded in 1992 in Grants Pass, Oregon by brothers Dane and Travis Boersma, Dutch Bros operates and franchises drive-thru coffee shops and sell and distribute coffee and

[1] Throughout this Complaint, all emphasis in quotations is added unless otherwise noted.

coffee-related products and accessories. Dutch Bros primarily serves espresso-based drinks, cold brew, proprietary energy drinks, smoothies, teas, and lemonades.

23. Prior to Dutch Bros' IPO in September of 2021, the Company had 471 shops in 11 states (207 of which were company-operated and 264 of which were franchised), and was in what it characterized as "the early stages of rapid growth." As recounted in Dutch Bros' Prospectus, one of the stated goals in consummating the IPO was facilitation of its expansion to at least 4,000 Dutch Bros locations in the United States.

24. In connection with this aggressive expansion strategy, Dutch Bros' Prospectus asserted that "Dutch Bros has invested in corporate infrastructure to stay one step ahead of the growth trajectory we expect in shops and sales," such that it has "flexibility around many of our input costs." The Prospectus also stated Dutch Bros would offset any potential increase in labor and benefits costs "with operational efficiencies and cost reduction measures in our supply chain and elsewhere before increasing our menu prices."

25. As recounted above and herein, however, by the time Dutch Bros issued its Prospectus in September 2021, skyrocketing inflation and commodities costs had been wreaking havoc on the U.S. economy for months and would continue to do so with no real end in sight. For example, on September 14, 2021, the first day of Dutch Bros' trading on the NYSE and three days prior to the closing of its IPO, the U.S. Bureau of Labor Statistics issued a press release announcing that the Consumer Price Index for All Urban Consumers ("CPI-U") increased 5.3% year-over year in the month of August. Importantly, the gasoline index rose 42.7% year-over-year, while the food index increased 3.7% year-over-year (with milk rising 1.3% and fresh whole milk rising 2.9% year-over-year).

26. As reported by *The Wall Street Journal* and numerous other publications, at this point, rising inflation was already a persistent force in the U.S. economy and "hopes are fading that supply-chain disruptions would pass after a few months." *The Wall Street Journal* also reported that "[e]conomists anticipate that broader, longer-lasting inflationary pressures will emerge in coming quarters," quoting Andrew Schneider, U.S. Economist at BNP Paribas, as stating that "what we're learning is that our supply chains were more vulnerable than previously thought and it's difficult to make a quick turnaround…."

27. That same day, on September 15, 2021, Defendant Ricci was interviewed on *Bloomberg Television* regarding Dutch Bros' IPO. In the Interview Defendant Ricci was asked if he was "seeing margins that could expand from here" and "what will drive margin expansion, what gets your profit higher." Defendant Ricci responded:

> ***Well you know I think you guys mentioned earlier, you know we're challenged with commodity costs and we've got to manage that***…. I think our goal here is to scale off of that investment we put in over the last three years and start to see you know margin expansion and just what should happen with the scale of a good company.

28. On September 17, 2021, the Company closed its IPO of approximately 24.2 million shares of Class A common stock at a public offering price of $23.00 per share. Proceeds from the IPO were approximately $556.8 million before deduction of underwriting discounts, commissions, and other offering expenses.

29. Thereafter, inflation and commodities prices would continue to rise for the foreseeable future. For example, as reported by *The Wall Street Journal*, *Financial Times*, *Reuters*, and numerous other publications on November 10, 2021, inflation rose to a then 31-year high. *The Wall Street Journal* quoted Kathy Bostjancic, Chief U.S. Financial Economist at Oxford

Economics, as stating that "[t]he bigger picture is we're likely to see inflation climb higher," and "[t]hings are going to get worse before they get better."

II. Defendants Misleadingly Downplay and Deny the Impacts of Inflation and Rising Commodities on Dutch Bros Throughout the Class Period

30. Despite these harsh realities, considering the Company's recent IPO, expansion strategy, and the fact that Defendants were firmly within the lock-up period coming off the IPO, Defendants were motivated to downplay and deny the material impact that rising inflation and commodities prices were having and would continue to have on Dutch Bros' margins, financials, and business.

31. On November 10, 2021, the first day of the Class Period, the Company issued a press release announcing the financials and results of operations for the period and third quarter ended September 30, 2021 (the "3Q21 Earnings Release"). Defendants then held a conference call with analysts and investors (the "3Q21 Earnings Call") during which Defendant Ricci touted Dutch Bros' opening of 33 shops within the quarter, stating that "[t]he prior opening record was 26 shops in the fourth quarter of 2020. ***We achieved this record despite the well-documented industry supply chain challenges. These supply chain issues impacted everything from building materials to equipment to product.***" Responding to analysts' direct questions regarding Dutch Bros' pricing and margins considering the troubling macroeconomic environment, Defendant Jemley stated, "***[W]e're not nearly as subject…to the types of inflationary pressures that others are having. We believe that, that price increase we just took will defend our margins again going into next year.***" When analysts pushed back, Defendant Jemley doubled down, stating that "***inflation, overall, it's very mild and tempered…. Dairy is not really up, that's a big component of our cost structure….*** ***And so we feel—we don't see the kind of pressure others are seeing.***"

32. Despite claiming that "[d]airy is not really up," this was simply not the case. As indicated above, data obtained from the USDA's NASS indicates that the national all-milk price received in the month of October 2021 was $19.60 per/cwt, already up substantially from $18.30 per/cwt in September 2021. And, less than a month prior, on October 15, 2021, the USDA published its weekly Dairy Market News Report for the week of October 11-15, 2021. Importantly, the "October Supply and Demand Estimates" section of the October 15, 2021 Dairy Report stated that "[m]ilk production forecasts for 2021 and 2022 are reduced from last month on smaller dairy cow numbers and slower growth in milk per cow," while "[f]or 2022, all dairy product prices are raised, largely on tighter supplies." Finally, this section of the Report stated that "[t]he 2021 all milk price is forecast higher at $18.45 per cwt," while "[t]he all milk price forecast for 2022 is $19.20 per cwt."

33. Thus, Defendant Jemley's statement that "[d]airy is not really up" conditioned investors to believe that milk prices, even if objectively up in terms of publicly available data, were not meaningfully impacting the Company's financials or business.

34. Then, just two days after Defendants' November 10, 2021 statements, the USDA published its weekly Dairy Market News Report for the week of November 8-12. With respect to "Class I" milk,[2] the November 12, 2021 Dairy Report stated that "with strengthening Class I demand, particularly compared to last year, milk availability is tighter." Importantly, the "November Supply and Demand Estimates" section of the November 12, 2021 Dairy Report stated that "[t]he milk production forecasts for 2021 and 2022 are reduced from the previous month on lower expected dairy cow numbers and slower growth in milk per cow." Finally, this section of

[2] Under the Federal Milk Order System, "Class I" milk is that milk which is used for beverages.

the Report stated that "[t]he 2021 all milk price forecast is raised to $18.50 per cwt," while "[t]he all milk price for 2022 is raised to $20.25 per cwt."

35. On December 10, 2021, the U.S. Bureau of Labor Statistics issued its press release announcing the CPI-U increased 6.8% year-over-year in the month of November. As reported by *The Wall Street Journal*, *The New York Times*, and numerous other publications that same day, the inflation figures provided by the U.S. Bureau of Labor Statistics now represented a 39-year high. *The Wall Street Journal* cited Costco Wholesale Corp.'s Chief Financial Officer, Richard Galanti, who indicated during an earnings call that Costco's 4.5-5% price hike during the most recent quarter might not be enough, and that price increases were likely "going to continue."

36. Notably, CW1 recalled that in or around December/late 2021, CW1's team was tasked with finding solutions to the issues of rising dairy costs and tighter dairy supply.

37. On January 10, 2022, Dutch Bros issued a press release announcing preliminary financials and results of operations for the period and fourth quarter and year ended December 31 (the "FY21 Preliminary Release"). The FY21 Preliminary Release quoted Defendant Ricci as stating that Dutch Bros' "2020 and 2021 shop classes are performing at or above our volume expectations and within our margin expectations," and that the Company expected "fourth quarter revenue to exceed the upper end of the previously provided guidance, with mature shop level margins in line with expectations."

38. A day later, on January 11, 2022, Federal Reserve Chair Powell, in connection with his renomination by President Biden as Chair of the Federal Reserve System, testified, "I think that inflationary pressures do seem to be on track to last well into the middle of next year."

39. That same day, however, Defendant Ricci was interviewed at the ICR, Inc. Conference in Orlando, Florida. When asked during the interview about takeaways from the FY21

Preliminary Release, Defendant Ricci stated, "***I think that the message that we sent yesterday was we're on-track with [our] plan, we're on-track with, <u>despite</u> what COVID challenges have brought and maybe some inflationary pressures have brought…***" When directly asked if Dutch Bros was experiencing "any supply chain challenges" and if the Company was "seeing things get better or worse," Defendant Ricci stated, "***We've certainly seen things get a little bit better as the ports have freed up on the West coast… and we seem to be doing pretty well on the cost of goods side and working with our suppliers on that end….***"

40. But Defendant Ricci's statements were simply untrue, as Dutch Bros was *not* doing well on the costs of goods side, because persistent "inflationary pressures" were decimating the Company's earnings and margins.

41. The very next day, on January 12, 2022, *The Wall Street Journal*, *The New York Times*, and numerous other publications reported that the latest CPI-U rate of 7% was the highest since 1982, and it would continue to rise even higher in the coming months.

42. Moreover, on March 1, 2022, *Hoard's Dairyman*, a leading American agricultural trade publication established in 1885 and focused on dairy farming, published an article entitled "Milk forecast could buck historical trends." The Article stated that "[m]ilk prices took off after the holidays and are now the highest they've been since 2014…. Forecasts indicate that strong price support should continue through the year given the contraction in both domestic and global milk supplies."

43. That same day, the Company issued a press release announcing the financials and results of operations for the period and fourth quarter and year ended December 31, 2021 (the "FY21 Earnings Release"). Defendants then held a conference call with analysts and investors (the "FY21 Earnings Call") during which Defendant Ricci stated, "***While we are not immune to***

margin pressures, but are managing it appropriately, we continue to look for operational improvements and further opportunities in our market-based pricing model." Responding to analysts direct questions about Dutch Bros' "really modest" price increases "relative to what we're seeing elsewhere," Defendant Jemley stated, "***[W]e've been fortunate to not have a lot of inflation drag, both in '21 <u>and frankly, moving into early '22</u>. And so we haven't felt compelled [to raise prices]***." Likewise, Defendant Ricci stated that Dutch Bros was "***just not feeling compression in margins.***"

44. The very next day, on March 2, 2022, *Dairy Herd Management*, a leading American trade publication for commercial dairy operators, published an article titled "2022 Milk Price Forecast: High Cost of Production Neutralizes High Milk Prices" (the "March 2, 2022 DHM Article"). The Article reported that "milk prices have hit their highest marks since 2014." The Article further quoted Carolyn Liebrand, an Agricultural Economist for the USDA's Agricultural Marketing Service, as stating that "[i]n a broad overview of 2022, we are going to see slow milk production growth worldwide which will support stronger prices." The Article further reported that, "[w]hile labor shortages and increased cost of production will certainly take a chunk out of dairy producers' profits, Leibrand says the increase in dairy product prices should support higher milk prices in 2022."

45. Then, on March 7, 2022, the very next trading day after the expiration of the lock-up period, Defendant Ricci sold 142,250 shares of Dutch Bros common stock for profits of ***$6,554,795.76***.

46. On March 9, 2022, Defendants Ricci and Jemley were interviewed in connection with Bank of America's Consumer & Retail Technology Conference. When asked during the interview if Defendants were "worried about…higher gas prices or consumer confidence or any

of these kind of factors that could have an impact in the near term," Defendant Jemley stated, "***[W]e're not greatly concerned about elevated energy prices and people's ability to still come and enjoy Dutch…Elevated energy affects our freight cost, but its – but we don't see it affecting our sales demand in the near term.***" When asked about Dutch Bros' pricing "in the context of your input costs going up," Defendant Ricci stated, "***[W]e're watching it every day. We're talking about it a lot, but we're also going to be considerate to the consumer.***"

47. On March 15, 2022, just six business days after the expiration of the lock-up period on March 4, 2022, Defendant Jemley sold 15,000 shares of Dutch Bros common stock for profits of ***$731,543.02.***

48. On April 5, 2022, Defendant Jemley sold an additional 5,000 shares on April 5, 2022 for profits of ***$270,398.30***.

49. On April 6, 2022, a "Welcome To the Arena" podcast interview with Defendant Ricci was published by ICR, Inc. When asked about Dutch Bros' advantages over its peers and competitors, Defendant Ricci yet again downplayed the impact of rising inflation and commodities costs on the Company's business: "***A lot of people have talked about supply chain problems. In those issues that you're serving food and you have all of these 150 ingredients that maybe a classic QSR chain would have, we have basically 12 and then some extensions of that. So we're a simple model, we have a very simple menu.***" When asked directly about how supply chain issues and commodity costs had affected Dutch Bros, Defendant Ricci stated, "***We just certainly haven't seen the inflation or supply chain challenges that we've heard about with other companies….***"

50. The day after, on April 7, 2022, an "Inside the Ice House" podcast interview with Defendant Ricci was published by the Intercontinental Exchange and NYSE. When asked directly during the interview about inflationary headwinds and the rising costs of commodities, including

gas prices, Defendant Ricci yet again downplayed the impact on Dutch Bros' business, stating, "***I think related to fuel prices…I wouldn't expect us to see much of a change.***"

51. On May 9, 2022, just two days before the end of the Class Period, Defendant Ricci sold an additional 71,125 shares for profits of ***$3,020,706.18***.

52. Finally, after the market closed on May 11, 2022, Defendants announced financial results for 1Q22. Dutch Bros reported a net loss of $16.3 million, compared to a net loss of $4.8 million for 1Q21. The Company also reported an adjusted net loss of $2.5 million (a loss of $0.02 per share), which fell below the market's estimated earnings of $0.01 per share.

53. Notably, during the 1Q22 Earnings Call, Defendant Ricci shocked the market when he blamed the Company's poor quarterly performance on "margin pressure," which was "primarily a result of [various] factors," including "faster inflation and cost of goods, especially in dairy"—*i.e.*, the poor results were the result of the very things Defendants repeatedly denied and downplayed throughout the Class Period, including as recently as March 1, 2022 (two-thirds of the way through 1Q22) and on two podcasts published on April 6 and 7, 2022 (after the close of 1Q22). Defendant Ricci finally admitted that "***a confluence of cost pressures overwhelmed our decisions around price and resulted in near-term margin compression….***"

54. Knowing Defendants had denied and downplayed that rising commodities prices and inflation were materially impacting Dutch Bros throughout the Class Period, and particularly in 1Q22, Defendant Ricci implausibly blamed the Company's unexpectedly poor results, in part, on gas prices and "macroeconomic headwinds" *suddenly* increasing in mid-March, even though inflation and relevant commodities prices had steadily increased before and during the Class Period with no real end in sight.

DEFENDANTS' MATERIALLY FALSE AND MISLEADING STATEMENTS AND OMISSIONS

I. November 10, 2021 Earnings Call

55. On November 10, 2021, the first day of the Class Period, the Company filed with the SEC a current report on Form 8-K. The Form 8-K included a press release dated November 10, 2021, which announced the financials and results of operations for the period and third quarter ended September 30, 2021 (the "3Q21 Earnings Release").

56. Defendants then held a conference call with analysts and investors on November 10, 2021 to discuss the 3Q21 Earnings Release (the "3Q21 Earnings Call"). During the 3Q21 Earnings Call Defendant Ricci touted Dutch Bros' opening of 33 shops within the quarter, stating, "The prior opening record was 26 shops in the fourth quarter of 2020. ***We achieved this record despite the well-documented industry supply chain challenges. These supply chain issues impacted everything from building materials to equipment to product.***"

57. Responding to questions regarding Dutch Bros' margins during the 3Q21 Earnings Call, Defendant Jemley reminded investors "that we did pulse prices in early November. We have not taken any prices in our system of any significance since pre COVID. ***And so we've absorbed a little bit of general inflation, normal inflation…[and] we've instituted a price increase to defend our margins going forward.***"

58. Responding to the questions regarding the sufficiency of Dutch Bros' pricing "in periods of outsized inflation," such as the "current environment," Defendant Jemley stated:

> So historically, over the years, 1% to 2% pricing. And as I mentioned, very low pricing since pre COVID. The great thing, and Joth mentioned this in his script, that we have 12 ingredients. We have a – ***I don't want to simplify the supply chain and dismiss the great effort our teams make to get things to stores. But we don't have a complexity that others do, and therefore, we're not nearly as subject, at least to date, to the types of inflationary pressures that others are having. We believe that, that price increase we just took will defend our margins again going into next year.*** And we want to just stay really focused on genuinely giving value to our customers, and we'll just monitor it, right? We don't have any hard and fast

> philosophy. It's an environment today where you've got to be able to pivot quickly, and that's the approach we'd like to take.
>
> ***I think we expect our margins to generally hold up. They are industry-leading, and we're very grateful to have that, and we'll watch this over time.***

59. Pushing back on Defendant Jemley's response regarding pricing vis-à-vis inflation, the same analyst asked if Dutch Bros' "basket of commodity or labor inflation…[is] really to the degree that it's fairly minimal?" Defendant Jemley responded:

> [***I]nflation, overall, it's very mild and tempered.*** And we don't say that thinking we're immune to the struggles that could happen going forward. But ***we've been very fortunate. Dairy is not really up, that's a big component of our cost structure.*** We're forward out on coffee, very long. And we have about a 3-bean blend that we can pivot around and manage our costs. ***And so we feel – we don't see the kind of pressure others are seeing.***

60. The statements in ¶¶ 56-59 above were materially false and/or misleading because, at the time each statement was made, Defendants failed to disclose that: (1) the Company was experiencing increased costs and expenses relating to commodities, including on dairy and petroleum; (2) as a result, the Company was experiencing increased margin pressure and decreased earnings and profitability; and (3) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. At the time each statement was made, inflation was skyrocketing (as opposed to being "very mild and tempered"), with the CPI up 6.2% year-over-year in October (after rising 5.4% year-over-year in September and 5.3% year-over-year in August). At the time each statement was made, dairy prices were already rapidly rising (as opposed to being "not really up"), with the USDA's 2021 all-milk price was forecasted at $18.45 per cwt in October (up from $18.15 per cwt in September) and 2022 all-milk price was forecasted at $19.20 per cwt (up from $18.40 per cwt in September). Then, on August 10, 2022, after the Class Period ended, Defendant Jemley conceded that inflation actually "began to show in Q2 of 2021," and the Company was only now "starting to lap the inflation."

II. November 12, 2021 Quarterly Report

61. On November 12, 2022, Dutch Bros filed with the SEC its quarterly report for the period and third quarter ended September 30, 2021 on Form 10-Q (the "3Q21 10-Q). Under the "Commodity Risks" subsection of a section titled "Quantitative and Qualitative Disclosures about Market Risk," the 3Q21 10-Q stated:

> Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including beverage, energy and other commodities. ***We have been able to partially offset cost increases resulting from several factors, including market conditions, shortages or interruptions in supply due to weather or other conditions beyond our control, governmental regulations and inflation, by increasing our menu prices, as well as making other operational adjustments that increase productivity.*** However, substantial increases in costs and expenses ***could impact*** our operating results to the extent that such increases cannot be offset by menu price increases.

62. Under the "Impact of Inflation" subsection of the "Quantitative and Qualitative Disclosures about Market Risk" section, the 3Q21 10-Q stated:

> The primary inflation factions affecting our operations are commodity and supplies, energy costs, and materials used in the construction of company-operated shops….
>
> While ***we have been able to partially offset inflation and other changes in the costs of core operating resources by gradually increasing menu prices, coupled with more efficient purchasing practices, productivity improvements and greater economies of scale***….

63. Under the "Risk Factors" section, the 3Q21 10-Q stated:

> We also purchase significant amounts of dairy products, particularly milk, to support the needs of our shops…. ***Increases in the cost of dairy products and other commodities, such as petroleum*** which in turn may increase the cost of our packing materials, or lack of availability, whether due to supply shortages, delays or interruptions in processing, or otherwise, especially in international markets, ***could harm our business***.

64. The statements in ¶¶ 61-63 above were materially false and/or misleading because, at the time each statement was made, Defendants failed to disclose that: (1) the Company was experiencing increased costs and expenses relating to commodities, including on dairy and petroleum; (2) as a result, the Company was experiencing increased margin pressure and decreased

earnings and profitability; and (3) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. At the time each statement was made, skyrocketing inflation and commodities costs were already materially harming Dutch Bros' business. In fact, on August 10, 2022, after the Class Period ended, Defendant Jemley conceded that inflation actually "began to show in Q2 of 2021," and the Company was only now "starting to lap the inflation."

III. January 11, 2022 ICR Conference Interview

65. On January 10, 2022 the Company filed with the SEC a current report on Form 8-K signed by Defendant Jemley. The Form 8-K included a press release dated January 10, 2022, which announced preliminary development and same shop sales results for the fourth quarter and fiscal year ended December 31, 2021 (the "FY21 Preliminary Release"). The FY21 Preliminary Release quoted Defendant Ricci as stating that Dutch Bros' "2020 and 2021 shop classes are performing at or above our volume expectations and within our margin expectations," and that the Company expected "fourth quarter revenue to exceed the upper end of the previously provided guidance, with mature shop level margins in line with expectations."

66. On January 11, 2022, Defendant Ricci was interviewed at the ICR, Inc. Conference in Orlando, Florida by John Jannarone, Editor-in-Chief of IPO Edge (the "January IPO Edge Interview"). When asked during the interview about takeaways from the FY21 Preliminary Release, Defendant Ricci stated that:

> ***I think that the message that we sent yesterday was we're on-track with [our] plan, we're on-track with, despite what COVID challenges have brought and maybe some inflationary pressures have brought, we've delivered 133 new unit openings last year on a plan of 130 and we stated our initial plan for 2023 is to open 150.*** So we're very excited about the development opportunity, we're excited about what our teams are doing to be able to get that done, and kind of what it means for communities really across the country to have Dutch Bros come to their town.

67. When asked if Dutch Bros had faced "any supply chain challenges" and if the Company was "seeing things get better or worse," Defendant Ricci stated:

> ***We've certainly seen things a get a little bit better as the ports have freed up on the West coast and you know it doesn't mean we have aren't having challenges, but nothing that's gotten in the way of our ability to serve the customer***….You know we look at supply chain and inflation I think the one area we're probably most concerned about is freight and ***we seem to be doing pretty well on the cost of goods side and working with our suppliers on that end***, but freight, as we grow across the country, I think we're realizing, you know, how much that impact is going to have, you know, on us and learning about that the long-term might look like.

68. The statements in ¶¶ 65-67 above were materially false and/or misleading because, at the time each statement was made, Defendants failed to disclose that: (1) the Company was experiencing increased costs and expenses relating to commodities, including on dairy and petroleum; (2) as a result, the Company was experiencing increased margin pressure and decreased earnings and profitability in the first quarter of 2022; and (3) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. In particular, at the time each statement was made, the macroeconomic conditions plaguing the U.S. economy and, in turn, Dutch Bros' business, were (as opposed to "get[ting] a little bit better") getting far worse, as the FOMC and Federal Reserve Chair Powell had now explicitly recognized inflation was not "transitory," Powell stated his expectation that elevated inflation would persist through "the middle of" 2022, and the CPI was up 6.8% year-over-year in November. At the time each statement was made, dairy prices were also rapidly rising, with the USDA's 2021 all-milk price was forecasted at $18.60 per cwt in December (up from $18.50 per cwt in November) and 2022 all-milk price was forecasted at $20.75 per cwt (up from $20.25 per cwt in November). Indeed, CW1 recalled that in or around December/late 2021, CW1's team was tasked with finding solutions to the issues of rising dairy costs and tighter dairy supply. Then, on August 10, 2022, after the Class Period ended, Defendant

Jemley conceded that inflation actually "began to show in Q2 of 2021," and the Company was only now "starting to lap the inflation."

IV. March 1, 2022 Earnings Call

69. On March 1, 2022, the Company filed with the SEC a current report on Form 8-K signed by Defendant Jemley. The Form 8-K included a press release dated March 1, 2022, which announced the financials and results of operations for the fourth quarter and fiscal year ended December 31, 2021 (the "FY21 Earnings Release"). That same day, Defendants held conference call with analysts and investors to discuss FY21 Earnings as well as Defendants' projections for 2022 and the first quarter of 2022 (the "March 2022 Earnings Call").

70. During the March 2022 Earnings Call, which was two-thirds of the way through the Company's first quarter of 2022, Defendant Ricci stated:

> ***While we are not immune to margin pressures, but are managing it appropriately, we continue to look for operational improvements and further opportunities in our market-based pricing model.*** In addition, we will use segmentation, personalization and innovation to excite our customers about our unique premium and, at times, higher-margin beverage offerings.
>
> In November, we successfully took a modest price increase of 2.9%. It was our first since prior to the pandemic and was well received by our customers, operators and franchisees.

71. During the March Earnings Call, Defendant Jemley stated:

> ***[A]s we moved through the pandemic, we were very careful not to escalate our menu prices. In November, we took a modest price increase, which was our first measurable price increase in over a year for our company shops. That price advance landed well for us. It was appropriate relative to our desired position in the market.***
>
> * * *
>
> ***Let's quickly look at the movement in beverage, food and packaging costs and labor costs, given those are the 2 most significant costs, and the industry in general has been challenged by these 2 areas over much of 2021.*** Beverage, food and packaging costs [for the fiscal year 2021] increased from 22.4% to 25.3% or 290 basis points. 120 basis points of that increase is related to the change in discounts. That leaves 170 basis points of real changes.
>
> * * *

> Beverage, food and packaging costs [for the fourth quarter of 2021] increased from 22.9% to 26.8% or 390 basis points. 190 basis points of this increase is related to the change in discounts. That leaves 200 basis points of real change or 30 basis points more than the full year trends noted above. Two things to point out: first, ***we incurred a bit more ingredient costs, driven by inflation***; and second, accelerating new shop development means we will have some cost efficiencies as we open up new shops and establish logistics in new markets.
>
> * * *
>
> ***We made the conscious decision to accelerate growth in the fourth quarter and into 2022. And while we always try to balance the profit growth equation in the near term, we are also keen to focus on long-term high-quality revenue that will yield lasting profit and growth.***

72. During the March 2022 Earnings Call, when asked by an analyst "to get your thoughts on what you think the right long-term margin of the business is and whether that's changed in or your mind or not," Defendant Jemley stated:

> So as long as we feel like we can hold the line on investment cost, and we're doing that just fine there, we can do these unit – average unit volumes 10%-plus versus the system average, and we get a 30% second year cash margin. ***We have a really compelling investment thesis that's very much in sync with what we articulated back in the fall.***

73. During the March 2022 Earnings Call, when asked by an analyst about Dutch Bros' "really modest [price increase] relative to what we're seeing elsewhere," and whether Dutch Bros was "contemplating adding more pricing to address some of the cost presumes in the business this year," Defendant Jemley stated:

> So we look typically in a normal time frame. We're going to look at our pricing windows every 6 months, right, in the fall before holiday, in the spring before summer. ***And so we're very mindful of that. I think we've been fortunate to not have a lot of inflation drag, both in '21 and frankly, moving into early '22. And so we haven't felt compelled.***
>
> ***We don't price to a margin. First of all, we want to price to what consumers are willing to pay. And so we're just – honestly, we're flexible and we're watching that closely, but we do, with the mindset of our relative position in the market and the customer, not to seek to a margin level. But we are feeling good as we enter '22 with the trajectory of our margins, given everything going on.***

74. When asked by an analyst for guidance for Dutch Bros' operating margin for the first quarter of 2022, Defendant Ricci stated:

> Yes, so ***we're fortunate that the two big costs, cost of goods and labor, we don't have any real significant upward momentum*** in the labor line. So we're starting halfway better than everybody else to begin with. And then secondly, ***we have a pretty simple pantry of goods. What we're really dealing with right now is freight and logistics costs going up.***
>
> ***But we're able to do as we've shown in Q4, and the walk I gave you in COGS, we are really able to handle that pretty effectively.*** And we'll get a full quarter of the price impact from November in our Q1. In terms of guiding a specific margin for Q1, I'd prefer not to do that. It is a – Q4 is the lowest seasonality, Q1 is the next lowest seasonality. And then we kind of get into Q2. But ***I just think from other than the discount rollover from a year-over-year perspective, we're just not feeling compression in margins.*** And the biggest thing for us is our labor costs are stable.

75. When asked by an analyst about results of the first quarter of 2022 as of that time and the effect of the Omicron variant of COVID-19 on those results, Defendant Jemley stated:

> ***It was softer in January. It was better in February, less outages.*** We're sitting ahead of the mid-singles right now. We're -- like everybody, don't know where the world is going to go over the next 30 days with all that's going on. And so we're just being a little tepid about how we look at things***. It doesn't really move the needle much.*** The biggest revenue driver is annualization of new stores and new stores getting added. ***So it gets a lot of talk track and it is important to the underlying health of the business, but it's really not that financially meaningful right now as fast as we're growing the top line. That's why we don't – we try not to overthink it.***

76. The statements in ¶¶ 70-75 above were materially false and/or misleading because, at the time each statement was made, Defendants failed to disclose that: (1) the Company was experiencing increased costs and expenses relating to commodities, including on dairy and petroleum; (2) as a result, the Company was experiencing increased margin pressure and decreased earnings and profitability in the first quarter of 2022; and (3) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. At the time each statement was made, inflation (as opposed to 'not having a lot of drag' on the Company's margins) was skyrocketing, with Federal Reserve Chair Powell stating his expectation that elevated inflation would persist through "the middle of" 2022 and the CPI up 7.5% year-over-year in January (after rising 7% year-

over-year in December). At the time each statement was made, Dutch Bros' cost of goods sold, especially dairy, were rapidly rising, with the USDA's 2022 all-milk price was forecasted at $23.55 per cwt in February (up from $22.60 per cwt in January). Indeed, CW1 recalled that in or around December/late 2021, CW1's team was tasked with finding solutions to the issues of rising dairy costs and tighter dairy supply. Moreover, despite reassuring the market two-thirds of the way through 1Q22 that the 1Q22 results would be positive and, in particular, that the Company's margins were healthy and not being compressed, Defendants would later reveal, on May 11, 2022, that rising inflation and commodities prices had, in truth, decimated the Company's projected earnings and margins in 1Q22. Then, on August 10, 2022, after the Class Period ended, Defendant Jemley conceded that inflation actually "began to show in Q2 of 2021," and the Company was only now "starting to lap the inflation."

V. March 9, 2022 Bank of America Consumer & Retail Technology Conference Interview

77. On March 9, 2022, Defendants Ricci and Jemley were interviewed by Bank of America's ("BofA") Sara Harkavay Senatore in connection with BofA's Consumer & Retail Technology Conference. When asked during the interview if Defendants were "worried about…higher gas prices or consumer confidence or any of these kind of factors that could have an impact in the near term," Defendant Jemley stated:

> I think we are concerned about the environment around us as citizens. ***But for Dutch Bros, we're not greatly concerned about elevated energy prices and people's ability to still come and enjoy Dutch.*** We feel like that would be one of the latter places that people would decide not to spend money on***. Elevated energy affects our freight cost, but its – but we don't see it affecting our sales demand in the near term.***

78. When asked during the interview about Dutch Bros' "moderate" pricing in comparison to its peers, especially "in the context of your input costs going up," Defendant Jemley stated:

> [B]ecause we have a beverage-only menu, ***we have the power of good margins going in.*** We are not using margin on food, for example. So that set some context to why we sort of feel like we can give people a great value at a reasonable price….
>
> ***Secondly, from a margin shape perspective, and Joth will talk about our cadence of how we actually think about price increases, but everybody's mind is around 2 things moving: one is commodity costs, and in our business that's cost of goods and labor.*** And really because we began this journey in a really good place with our culture and the take home pay that our people have and everything we do for our people and about our people, we have not had wage escalation pressure….
>
> ***So you take that – half of that pressure off the table from a margin perspective. And you really just dial the margin pressure into freight and logistics costs, in the cost of goods, which allowed us, we don't price to margin, we price to consumers' willingness to pay, but those things work together to really be able to take a moderate reasonable price increase back in November to kind of put us in a good spot going into this year.***

79. In response to the same question regarding pricing, Defendant Ricci then stated:

> [W]e're going to evaluate it every 6 months. We'll look at it in the spring as we head into the late spring and summertime, and then we'll look at it again in the fall as we head into the holiday season and really into winter. And we'll evaluate our costs, we'll evaluate our dynamic pricing differences between our sizes. We'll look at what we think our promotional menu will drive for us. ***And we'll kind of look at it holistically versus just looking at it as menu items that and a price increases. So we're going to take a lot of factors into consideration as we think about price. And yes, we're watching it every day. We're talking about it a lot, but we're also going to be considerate to the consumer.***

80. The statements in ¶¶ 77-79 above were materially false and/or misleading because, at the time each statement was made, Defendants failed to disclose that: (1) the Company was experiencing increased costs and expenses relating to commodities, including on dairy and petroleum; (2) as a result, the Company was experiencing increased margin pressure and decreased earnings and profitability in the first quarter of 2022; and (3) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. In particular, at the time each statement was made, skyrocketing inflation, and rising energy prices especially (as opposed to not "affecting our sales demand in the near term"), had and would further negatively affect Dutch Bros' sales, particularly in light of Defendant Ricci's May 11, 2022 admission that "***in mid-March when gas***

prices jumped the way they did, we saw an immediate flip on our daily sales. It was almost to the day of the way that, that works. So I think you could infer -- and we believe that we've done some analysis on the gas prices and influence related to our daily sales, and we believe it has influenced it. And we believe that if gas prices stay inflated, it will continue to influence it." According to data obtained from the U.S. Department of Energy's Energy Information Administration, moreover, the average retail price per gallon of all grades of gasoline in the U.S. for the week ended March 7, 2022 was already $4.196, up $0.721, or over *20%*, compared to the combined average retail price per gallon of gasoline in the U.S. for the 16 previous Class Period weeks (beginning with the week ended November 15, 2021). At the time each statement was made, Dutch Bros' cost of goods sold, especially dairy, were rapidly rising, with numerous trade publications reporting that milk prices were the highest they've been since 2014 and the USDA's 2022 all-milk price was forecasted at $23.55 per cwt in February (up from $22.60 per cwt in January). Indeed, CW1 recalled that in or around December/late 2021, CW1's team was tasked with finding solutions to the issues of rising dairy costs and tighter dairy supply. Moreover, despite making these statements being made more than two-thirds of the way through 1Q22, Defendants would later reveal, on May 11, 2022, that rising inflation and commodities prices had, in truth, decimated the Company's projected earnings and margins in 1Q22. Then, on August 10, 2022, after the Class Period ended, Defendant Jemley conceded that inflation actually "began to show in Q2 of 2021," and the Company was only now "starting to lap the inflation."

VI. March 11, 2022 Annual Report

81. On March 11, 2022, Defendants filed with the SEC a report for the fourth quarter and fiscal year ended December 31, 2021 on Form 10-K, signed by Defendants Ricci and Jemley (the "FY21 10-K").

82. Under the "Commodity Risks" subsection of a section titled "Quantitative and Qualitative Disclosures about Market Risk," the FY21 10-K stated:

> Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including beverage, energy, and other commodities. ***We have been able to partially offset cost increases resulting from several factors, including market conditions, shortages or interruptions in supply due to weather or other conditions beyond our control, governmental regulations and inflation by increasing our menu prices as well as making other operational adjustments that increase productivity.*** However, substantial increases in costs and expenses ***could impact*** our operating results to the extent that such increases cannot be offset by menu price increases.

83. Under the "Impact of Inflation" subsection of the "Quantitative and Qualitative Disclosures about Market Risk" section, the FY21 10-K stated:

> The primary inflation factors affecting our operations are commodity and supplies, energy costs, and materials used in the construction of company-operated shops….
>
> While ***we have been able to partially offset inflation and other changes in the costs of core operating resources by gradually increasing menu prices, coupled with more efficient purchasing practices, productivity improvements and greater economies of scale***….

84. The statements in ¶¶ 82-83 above were materially false and/or misleading because, at the time each statement was made, Defendants failed to disclose that: (1) the Company was experiencing increased costs and expenses relating to commodities, including on dairy and petroleum; (2) as a result, the Company was experiencing increased margin pressure and decreased earnings and profitability in the first quarter of 2022; and (3) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. In particular, at the time each statement was made, skyrocketing inflation and rapid increases in the costs of dairy and petroleum had already harmed Dutch Bros' business, compressed its margins, reduced its sales, and completely overwhelmed Company's November 2021 price increases, as the CPI was up 7.9% year-over-year in February (after rising 7.5% year-over-year in January), and the USDA's 2022 all-milk price was

forecasted at $25.05 per cwt in March (up from $23.55 per cwt in February). Indeed, CW1 recalled that in or around December/late 2021, CW1's team was tasked with finding solutions to the issues of rising dairy costs and tighter dairy supply. Moreover, Defendants would later reveal, on May 11, 2022, that rising inflation and commodities prices had, in truth, decimated the Company's projected earnings and margins in 1Q22. Then, on August 10, 2022, after the Class Period ended, Defendant Jemley conceded that inflation actually "began to show in Q2 of 2021," and the Company was only now "starting to lap the inflation."

VII. April 6, 2022 "Welcome To the Arena" Interview

85. On April 6, 2022, an audio interview with Defendant Ricci was published on the "Welcome To the Arena" ("WTTA") podcast feed (the "WTTA Interview"). WTTA is a podcast published by ICR, Inc., a strategic communications and advisory firm and hosted by ICR Co-Founder and CEO Thomas M. Ryan. When asked during the interview about Dutch Bros' advantages over its peers and competitors, Defendant Ricci stated:

> ***Our business is pretty simple, right? I mean, we keep a very simple ingredient base.*** We don't have ovens and kitchens and we're a drive-thru business. We have very few walk-in locations of the 575 locations we have today. We're really focused on doing what we do and doing it very, very well. We don't complicate it.
>
> ***A lot of people have talked about supply chain problems. In those issues that you're serving food and you have all of these 150 ingredients that maybe a classic QSR chain would have, we have basically 12 and then some extensions of that. So we're a simple model, we have a very simple menu. We have a core base of espresso and energy drinks and things like that.***

86. When asked about the effect of the IPO on Dutch Bros, Defendant Ricci stated:

> ***Having done a few other public companies, I think that the structure and the discipline that being a public company creates, I think that makes you a better company.*** The infrastructure that you're, you know, really required to hire, the reporting that you're required to do, I think makes you better in everything else that you do***. It forces you to look further out, it forces you to plan ahead, it forces you to be committed to a gameplan and be able to resource that. We're growing into that.*** We've put a lot of good people in place and we've added some great resources to the company over the last couple of years to prepare for this, but I think we're still growing into that. ***I think our G&A still has some work to do.***

87. When asked to talk about how "supply chain stuff, labor cost, commodity costs" "affects you, or maybe not as much as your peers or in others in the industry," Defendant Ricci stated:

> ***On the supply chain. You know, like I said earlier, we work with a pretty small ingredient base and so we're working very closely with a very small amount of suppliers that are doing that.*** Now, we've had the occasional trip up on a part for an ice machine or something that we could get and we've had to respond accordingly and be able to pivot, which our team again has done a great job of doing. <u>***We just certainly haven't seen the inflation or supply chain challenges that we've heard about with other companies***</u>***, and it goes back to simple, right? I mean, the more simple the business, the more effective, and fortunately we have the numbers to back it up, and we sit in a pretty good spot.***

88. When asked about Dutch Bro's financials, Defendant Ricci stated:

> ***Margin-wise, we've been told that our margin numbers and our EBITDA numbers are industry-leading, and maybe we'll let other people fill in the blanks related to that.*** But I think because our supply chain and our logistics and everything is so simple, you know we run a pretty efficient business with a lot of throughput.

89. The statements in ¶¶ 85-87 above were materially false and/or misleading because, at the time each statement was made, Defendants failed to disclose that: (1) the Company was experiencing increased costs and expenses relating to commodities, including on dairy, coffee, and gas; (2) as a result, the Company was experiencing increased margin pressure and decreased earnings and profitability in the first quarter of 2022; and (3) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. In particular, at the time each statement was made, skyrocketing inflation and rapid increases in the costs of dairy and petroleum had already harmed Dutch Bros' business, compressed its margins, reduced its sales, and completely overwhelmed Company's November 2021 price increases, as the CPI was up was up 7.9% year-over-year in February (after rising 7.5% year-over-year in January), and the USDA's 2022 all-milk price was forecasted at $25.05 per cwt in March (up from $23.55 per cwt in February). Indeed,

CW1 recalled that in or around December/late 2021, CW1's team was tasked with finding solutions to the issues of rising dairy costs and tighter dairy supply. Moreover, Defendants would later reveal, on May 11, 2022, that rising inflation and commodities prices had, in truth, decimated the Company's projected earnings and margins in 1Q22, which had already concluded at the time of these statements. Then, on August 10, 2022, after the Class Period ended, Defendant Jemley conceded that inflation actually "began to show in Q2 of 2021" (*i.e.*, the prior year), and the Company was only now "starting to lap the inflation."

VIII. April 7, 2022 "Inside the Ice House" Interview

90. On April 7, 2022, an audio interview with Defendant Ricci was published on the "Inside the Ice House" ("ITIH") podcast feed (the "ITIH Interview"). ITIH is a podcast published by the Intercontinental Exchange and NYSE and hosted by interviewer Josh King. When asked during the interview if he saw "headwinds for your drive through [] from the recent rise in both coffee bean and gas prices," Defendant Ricci stated:

> A third of our business is done in espresso-based drinks. ***Coffee, technically, makes up a pretty small percentage of our overall cost of goods. We're not concerned about it.*** I think when you live in the coffee world, you're used to the C price going way up and way down and you just kind have to live in that commodity space.
>
> ***I think, related to fuel prices***, most of our stands are, they are within a kind of a person's daily life, right? It's on the way to school or on the way to work or something that you're not going to stop doing anyway. I think that from the kind of the bubble that people live in, most of our stands to kind of work within that bubble. We'll see a little bit of hit related to kind of road trips. On the west coast, we have a stand that I hear about all the time in Davis, California. That's, if you're driving from the Bay Area to Tahoe, everyone says, "Well, I stop at that Dutch on my way to Tahoe." Well, the road trip may go down a little bit here as gas prices are high but I think for daily living, ***I wouldn't expect us to see much of a change***.

91. The statements in ¶ 90 above were materially false and/or misleading because, at the time each statement was made, Defendants failed to disclose that: (1) the Company was experiencing increased costs and expenses relating to commodities, including on dairy and petroleum; (2) as a result, the Company was experiencing increased margin pressure and decreased

earnings and profitability in the first quarter of 2022; and (3) as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis. At the time each statement was made, rising energy prices had and would further negatively affect Dutch Bros' sales, particularly in light of Defendant Ricci's May 11, 2022 admission that "***in mid-March when gas prices jumped the way they did, we saw an immediate flip on our daily sales. It was almost to the day of the way that, that works. So I think you could infer -- and we believe that we've done some analysis on the gas prices and influence related to our daily sales, and we believe it has influenced it. And we believe that if gas prices stay inflated, it will continue to influence it.***" According to data obtained from the U.S. Department of Energy's Energy Information Administration, moreover, the average retail price per gallon of all grades of gasoline in the U.S. for the week ended April 4, 2022 was $4.274, up $0.630, or over *17%*, compared to the combined average retail price per gallon of gasoline in the U.S. for the 20 previous Class Period weeks (beginning with the week ended November 15, 2021). Indeed, CW1 recalled that in or around December/late 2021, CW1's team was tasked with finding solutions to the issues of rising dairy costs and tighter dairy supply. Moreover, Defendants would later reveal, on May 11, 2022, that rising inflation and commodities prices had, in truth, decimated the Company's projected earnings and margins in 1Q22, which had already concluded at the time of these statements. Then, on August 10, 2022, after the Class Period ended, Defendant Jemley conceded that inflation actually "began to show in Q2 of 2021," and the Company was only now "starting to lap the inflation."

IX. Defendants Fail to Disclose Material Information Required by Item 303

92. Dutch Bros' SEC filings also failed to disclose material information required by Item 303 of Regulation S-K (17 C.F.R. §229.303). Specifically, Item 303 required Dutch Bros to describe "any known trends or uncertainties that have had or that are reasonably likely to have a

material favorable or unfavorable impact on net sales or revenues or income from continuing operations." 17 C.F.R. § 229.303(a)(3)(ii). Similarly, Item 303 required Dutch Bros to disclose events that Dutch Bros knew were "reasonably likely to cause a material change in the relationship between costs and revenues (such as known or reasonably likely future increases in cost of labor or materials or price increases or inventory adjustments)" and "any unusual or infrequent events or transactions or any significant economic changes that materially affected the amount of reported income from continuing operations and, in each case, indicate the extent to which income was so affected." 17 C.F.R. § 229.303(a)(3)(i), (ii).

93. The SEC has provided guidance on Item 303, clarifying that disclosure is necessary "where a trend, demand, commitment, event or uncertainty is both presently known to management and reasonably likely to have material effects on the registrant's financial conditions or results of operations." Management's Discussion and Analysis of Financial Condition and Results of Operations, Exchange Act Release No. 6835, 43 S.E.C. Docket 1330, 1989 SEC LEXIS 1011, 1989 WL 1092885, at *4 (May 18, 1989).

94. Here, in violation of Item 303, Defendants failed to disclose whether, to what extent, and/or the manner in which rising commodities prices and inflationary headwinds, which were well known to Defendants prior to and throughout the Class Period, might have been reasonably expected to materially impact Dutch Bros' results of operations or financial condition, including its margins, costs of goods sold, net income, and/or EBITDA.

95. Indeed, Defendants' post-Class Period disclosures demonstrate that Dutch Bros' Class Period disclosures failed to comply with Item 303. For example, on May 12, 2022, Dutch Bros filed with the SEC its quarterly report for the period and first quarter ended March 31, 2022 on Form 10-Q (the "1Q22 10-Q"). Under the "Impact of Global Events" subsection of the

"Management's Discussion and Analysis of Financial Condition and Results of Operations" section, the 1Q22 10-Q stated:

> Similar to many of our peers in the industry, in the three months ended March 31, 2022, we encountered current commodity inflation and experienced increasing minimum wages in certain states. ***We expect commodity inflation to continue to affect our operating results in the foreseeable future. While these cost increases have impacted our operating results, [we] have taken measures to gradually increase our menu prices to help offset these pressures. We will continue to evaluate further pricing actions into 2022 to protect our operating results.***

96. The "Impact of Global Events" subsection of the 1Q22 10-Q further stated:

> ***Because of our drive-thru shops model, we are monitoring closely the impact of recent significant increases in oil and gas prices on our customers' behavior and believe such increases have resulted in decreased demand, which we believe is likely to continue.***

97. The foregoing statements are in stark contrast with Defendants' prior, Class Period statements. Throughout the Class Period, Defendants consistently denied and downplayed the Company's exposure to inflationary headwinds, and touted the November 2021 price increases as sufficient to maintain projected margins.

98. Under the "Commodity Risks" subsection of a section titled "Quantitative and Qualitative Disclosures about Market Risk," the 1Q22 10-Q stated:

> Our profitability is dependent on, among other things, our ability to anticipate and react to changes in the costs of key operating resources, including beverage, energy, and other commodities. We have been able to partially offset cost increases resulting from several factors, including market conditions, shortages or interruptions in supply due to weather or other conditions beyond our control, governmental regulations and inflation by increasing our menu prices as well as making other operational adjustments that increase productivity. *However, substantial increases in costs and expenses,* ***such as the approximately 25% increase in dairy commodities pricing during the three months ended March 31, 2022,*** *could impact our operating results to the extent that such increases cannot be offset by menu price increases*. ***Additionally, if there is a time lag between increasing commodity prices and our ability to increase menu prices or if we choose not to pass on the cost increases, our operating results could be negatively affected.***

99. Unlike the corresponding statements in Dutch Bros' 3Q21 10-Q and FY21 10-K, the Company's 1Q22 10-Q here included additional language regarding "dairy commodities pricing" and a "time lag between increasing commodity prices" and "increase[d] menu prices" to reflect the fact that its prior "disclosures" did not sufficiently convey the then-present risk that rising dairy and commodities prices were significantly outstripping Dutch Bros' pricing and/or margins in the 3Q21 10-Q and FY21 10-K.

100. Moreover, under the "Risk Factors" section, the Company's 1Q22 10-Q stated:

> We also purchase significant amounts of dairy products, particularly milk, to support the needs of our shops. ***For example, the cost of dairy products increased significantly towards the end of the three months ended March 31, 2022, and we continue to see such increased costs. If these increased dairy costs are sustained or further increased, this could harm our business*****….**
>
> Increases in the cost of other commodities, such as petroleum, may increase the cost of our packing materials, or lack of availability, whether due to supply shortages, delays or interruptions in processing, impact consumer spending or could otherwise harm our business. ***For example, we believe the recent increase in gas prices has negatively impacted consumer discretionary spending, particularly in the Western United States where such increases have been relatively higher and where our shops are geographically concentrated.***

101. Unlike the corresponding statements in Dutch Bros' 3Q21 10-Q and FY21 10-K, the Company's 1Q22 10-Q here included additional language regarding the actual increases in dairy prices and the effect of increased gas prices on customer spending to reflect the fact that its prior "disclosures" did not sufficiently convey the then-present risk that rising dairy and commodities prices were significantly outstripping Dutch Bros' pricing and/or margins in the 3Q21 10-Q and FY21 10-K.

THE TRUTH IS REVEALED AT THE END OF THE CLASS PERIOD

102. On May 11, 2022, after the market closed, Dutch Bros issued the 1Q22 Earnings Release announcing financial results for the first quarter of 2022. Dutch Bros reported a net loss of $16.3 million, compared to a net loss of $4.8 million for the first quarter of 2021. The Company

also reported an adjusted net loss of $2.5 million (a loss of $0.02 per share), which fell below the market's estimated earnings of $0.01 per share. In part, Defendant Ricci added: "Still, we were not immune to the record inflation that surpassed our expectations and pressured margins in our company-operated shops. While we believe these margin impacts may be short-term, we have opted to take a more conservative stance regarding adjusted EBITDA for 2022 as we monitor our pricing and escalating cost environment."

103. That same day, after the market closed, the Company held the 1Q22 Earnings Call to discuss the Company's first quarter 2022 results. To explain the Company's poor performance, Defendant Ricci pointed to Dutch Bros' margins, stating:

> [M]argin pressure on our company shops led to a lower adjusted EBITDA result than we expected. That margin pressure was primarily a result of three factors: our decision to be disciplined on the price we took, which we believe is less than half as much as many of our peers; faster inflation and cost of goods, especially in dairy; the pull forward of deferred expenses related to the maintenance of shops; and normal new store inefficiency amplified by the volume of new and ramping units in quarter 1.

104. Defendant Ricci further stated:

> Unfortunately, in this past quarter, ***a confluence of cost pressures overwhelmed our decisions around price and resulted in near-term margin compression.*** We anticipated higher expenditures. However, we did not perceive the speed and magnitude of cost escalation within the quarter.
>
> ***Dairy, for example, which makes up 28% of our commodity based, rose almost 25% in Q1.*** While costs rose throughout the quarter, we experienced a change in sales trajectory from mid-March onward as macroeconomic headwinds accelerated and comps turned negative. ***We are monitoring these factors and have chosen to take a more conservative stance on our 2022 outlook given macroeconomic uncertainty.***

105. Defendant Jemley stated:

> For Q1, company-operated shop contribution decreased from 26.8% of company-operated shop revenue to 18.3%. I'll walk you through the key drivers of that decline. ***It starts with our decision to be conservative on price, considers recent cost pressures and ends with the margin impact of executing our fast-paced, company shop-led growth strategy….***

Beginning in November of 2021, we took our first price increase since the beginning of COVID, a modest 2.9%. This translated to approximately 220 basis points of margin relief. At that time, we believe this was appropriate given the cost increases we were experiencing. As a company, we try to avoid taking large price increases. And when we do take price, we try to do it infrequently. We think this is the right way to build lasting relationships with our customers and serves to encourage them to make Dutch Bros a key part of their daily beverage routine.

However, ***as Q1 unfolded, we experienced 3 significant rapid cost escalations*** that, on an individual basis, would not have caused distress, but when taken collectively, did overwhelm our P&L: ***faster input cost inflation, especially in dairy and also labor cost increases; the pull forward of expenses related to the ongoing care and condition of shops; and new and normal new store inefficiency amplified by the sheer volume of new and ramping units in quarter 1.***

In the first quarter, we encountered 480 basis points of cost pressure from those higher ingredient costs relative to the prior year. As Joth noted, ***dairy increased by almost 25% towards the end of the first quarter to near historic highs in what is now 28% of our ingredients cost basket. We did not anticipate this sharp rise. While we do not believe dairy will stay this high indefinitely, we have to assume it will remain high for most of 2022.***

Additionally, we encountered 240 basis points of cost pressure on our labor line. This includes higher training costs, higher overtime to keep stores open and higher legislated minimum wage advances in California, Arizona and Washington states….

The combination of margin pressure from ingredient costs and higher labor costs resulted in margin compression of 720 basis points prior to offsets we achieved through menu price increases. Our modest price increases that began in November and a positive discount rollover offset 370 basis points of this pressure, netting to 350 basis points margin compression. ***Please note that in April, we placed a further 3% menu price increase into motion that we expect to finish rolling out to the system by the end of May. Should these elevated costs remain, we will assess further pricing actions and productivity measures through the balance of this year to protect shop profitability long term.***

* * *

Inflation in both ingredient and operating costs has risen rapidly, catching us off guard from the speed and the sharpness of this rise. In the short term, it is unlikely that our new menu price actions will fully offset the extent of these input cost increases. We believe outsized menu price moves in the face of consumer discretionary spending headwinds would not be wise at this stage. For our high-growth brands, the lifetime value of each customer is heightened. It is our desire to keep our menu prices approachable for customers across the income spectrum.

Given the unexpected speed and magnitude of these costs and consumer demand events, we are taking a more conservative view of 2022 adjusted EBITDA and

> ***same shop sales.*** However, given the strength of our openings and their attractive returns, we are modestly accelerating new shop development.

106. When asked by an analyst about the decline in sales, Defendant Jemley stated:

> ***[T]he biggest differential we've seen is where the gas prices, fuel prices, energy prices are elevated. We've seen more of this lack of sales growth coming in those areas, which, among may other factors, points to the discretionary income piece at the low end of the consumer.***
>
> * * *
>
> ***We know our business seasonality, and the growth in our business seasonally really stopped in the middle of March. We left February when he has the last earnings call with a really solid comp number through February, and then it just decelerated very quickly from that point.***

107. When asked by an analyst about factors affecting the Company's margin compression, Defendant Jemley stated:

> ***The biggest change for us is this ingredient, logistics, supply chain cost increase that we're feeling. And that's why we're pulling our guidance down*** because relative to our models, we've got that 300 to 400 basis points margin contraction going forward.

108. When asked by an analyst about the Company's ability to ameliorate supply chain constraints, Defendant Ricci stated:

> So I think on the commodity costs, in the place that we're at right now, to see short-term effective improvement is limited in how we buy and kind of where we're at. We're out long on coffee. ***Dairy, obviously, you don't have a lot of control over. And then really, we're kind of beholden to some freight impacts and some other small basket of goods because we just don't have that much in our basket. It just so happens that dairy makes up such a large percentage of that basket.***
>
> ***[D]airy certainly caught us off guard.*** I do think we have some opportunity to improve internally on our purchasing and our purchasing capabilities and how we look at that long term. And as we grow, that is an area of emphasis for Charlie and myself as we kind of, I'd say, build that muscle here at Dutch Bros.

109. When asked by an analyst about the Company's margins moving forward considering "structural headwinds," Defendant Jemley responded:

> ***These are just unprecedented increases in our most -- our highest cost item, dairy, amongst other things.*** At some point, you have to feel like that can normalize and get to some reasonable place. It's typically very cyclical***. If it does structurally stay***

> ***elevated, as we mentioned, we'll look at our pricing -- menu pricing structure to try to deal with that.***

110. When asked by an analyst about the effect of rising gas prices on the Company's declining sales, Defendant Ricci stated:

> [W]ithout claiming to be a macroeconomist, I will tell you that ***in mid-March when gas prices jumped the way they did, we saw an immediate flip on our daily sales. It was almost to the day of the way that, that works. So I think you could infer -- and we believe that we've done some analysis on the gas prices and influence related to our daily sales, and we believe it has influenced it. And we believe that if gas prices stay inflated, it will continue to influence it.***
>
> * * *
>
> ***So there is something there to that. And I think as long as gas prices stay high, I think we can continue to see consumer trends or consumer spending will suffer.***

111. On this shocking news, Dutch Bros' share price fell $9.26, or 26.9%, to close at $25.11 per share on May 12, 2022, on unusually heavy trading volume. And Dutch Bros' stock declined from $62.30/share at the close of trading on November 10, 2021, the first day of the Class Period, to $25.11 at close on May 12, 2022, an astonishing ***59.7%*** decline in value. Due to this decline, Plaintiff and the members of the Class have suffered economic losses.

POST CLASS PERIOD EVENTS

112. After Defendants revealed Dutch Bros' published the 1Q22 Earnings Release and held the 1Q22 Earnings Call, many analysts expressed surprise and immediately and dramatically lowered their guidance.

113. For example, analysts at J.P. Morgan North American Equity Research ("J.P. Morgan") published a report lowering the firm's price target for Dutch Bros' stock to $36/share, down from $58/share – a decrease of approximately ***38%*** (the "May 12, 2022 J.P Morgan Report"). The Report characterized Dutch Bros' performance as "[a] 'head in the hands' quarter," found "worrying was another poor quarter of margin performance (the market was forgiving after both

3Q and 4Q margins were short) but punctuated by discussion that comps hit a major slowdown in March and have been running down 3.7% in April (vs 4.8% 2Q street)."

114. On May 12, 2022, analysts at William Blair Equity Research ("William Blair") published a report noting that, given the Company's "surprising retrenchment in comps and revised full-year EBITDA outlook, Dutch's shares fell more than 30% in the aftermarket…."

115. Furthermore, on August 10, 2022, Dutch Bros filed with the SEC a current report on Form 8-K. The Form 8-K included a press release dated August 10, 2021, which announced the financials and results of operations for the period and second quarter ended June 30, 2022 (the "2Q22 Earnings Release"). The Release stated, "***Like many of our peers, the macro-economic environment is impacting various aspects of our business, and our company-operated shop margins continue to be pressured by record inflation in the second quarter***. That said…we took a 3% price increase in the second quarter…. We are evaluating further menu pricing action as needed in the back half of the year."

116. Later that same day, on August 10, 2022 at approximately 6:00 p.m. EST, the Company held a conference call to discuss the Company's second quarter 2022 results (the "2Q22 Earnings Call"). During the Call Defendant Ricci stated that "[i]n Q2, we took a second round of pricing of about 3%. In Q2, we have about 5.3% of pricing running through our total system." Defendant Ricci further stated that "many input costs that have traditionally been more transitory have remained elevated," such that the Company is "considering additional menu pricing actions in Q3." During the Call Defendant Jemley stated that "costs do remain elevated compared to the prior year and have outpaced productivity gains and pricing actions" and that "***[w]e are <u>starting</u> to lap the inflation that began to show in Q2 of 2021***."

LOSS CAUSATION/ECONOMIC DAMAGES

117. As alleged herein, during the Class Period, Defendants made numerous material misstatements and omissions denying and downplaying that macroeconomic pressures, including rising inflation and commodities prices, were having a material impact on Dutch Bros' business, financials, and margins. Analysts and market participants took notice. In fact, on November 10, 2021, the first day of the Class Period, numerous analysts following the Company reacted positively to the 3Q21 Earnings Release and 3Q21 Earnings Call, raising their price targets for Dutch Bros' stock.

118. For example, analysts at Cowen published a report titled "Strong 3Q & Outlook Provides a Jolt to Shares" and raising the firm's price target for Dutch Bros' stock to $70/share, up from $50/share – an increase of ***40%*** (the "November 10, 2021 Cowen Report"). The Report stated that "BROS bucked the industry trend with no material impact to comps in 3Q from staffing challenges, aided by the brand's culture…and strong unit economics…that allows the company to pay in excess of minimum wage." The Report further stated that "[t]he company took a ~2.5% price increase in November which we believe to be appropriate in the context of a normalized 1%-2% pricing range and no price increases in the last ~2 years."

119. Analysts at J.P. Morgan published a report reiterating the firm's price $47/share price target (the "November 11, 2022 J.P. Morgan Report"). The Report stated, "Apparently operating in a different economy than most others, BROS discussed very minor labor-shortage-related shortage of operating hours or even significant influence on normal drive through throughput…. ***Also, there were no in-store ingredient issues of note and the construction pipeline looks good***."

120. Analysts at Barclays published a report raising the firm's price target to $56/share, up from $40/share – an increase of ***40%*** (the "November 11, 2021 Barclays Report"). The Report

stated that "[l]ooking to 4Q21, EBITDA guidance is above consensus, with the brand not seeing material commodity or labor inflation, and only needing modest menu pricing." The Report further stated that, "with a focus on beverages, food costs are low and restaurant margins are industry leading." The Report further stated that "[i]n terms of costs, commodity basket inflation is up low-single-digit & labor basket inflation is minimal with no manager turnover and only mid-50% hourly turnover. And with a focus on driving traffic, management did not take any material menu pricing through the pandemic, relative to their historical practice of 1-2%, though did take ~2.5% in November '21."

121. On November 15, 2021, *QSRmagazine.com*, a leading industry publication for quick-service and fast-casual restaurants, published an article titled "Dutch Bros Dodges Full Impact of Inflation" (the "November 15, 2021 QSR Article"). The Article heavily quoted Defendants' statements from the 3Q21 Earnings Call in concluding "that Dutch Bros simply doesn't have too much to report when it comes to the not-so-great news, like rising labor and commodity costs." The Article likewise stated that "[t]he CFO said dairy hasn't seen much inflation, which is a significant component of the chain's cost structure…."

122. Then, on May 11, 2022, after the market closed, the truth about Defendants' alleged misrepresentations and omissions was revealed in the 1Q22 Earnings Release and the 1Q22 Earnings Call, wherein Defendants revealed that rising commodities price and inflation had, in fact, materially impacted Dutch Bros' business and financials during the Class Period. When the truth about Dutch Bros was revealed to the market, the price of Dutch Bros common stock declined in response, as the artificial inflation caused by Defendants' material omissions and false and misleading statements made during the Class Period was removed from the price of Dutch Bros common stock, thereby causing substantial damage to Plaintiff and other members of the Class.

Indeed, on this news, the price of Dutch Bros Stock fell $9.26, or 26.9%, to close at $25.11 per share on May 12, 2022, and fell overall from $62.30/share at the close of trading on November 10, 2021, the first day of the Class Period, to $25.11 at close on May 12, 2022, an astonishing ***59.7%*** overall decline in value.

123. The economic loss suffered by Plaintiff and other members of the Class was a direct result of Defendants' misrepresentations and omissions. The economic loss (*i.e.*, damages) suffered by Plaintiff and other members of the Class, was a direct result of the truth about Defendants' misrepresentations and omissions being revealed to investors, and the subsequent, significant decline in the value of Dutch Bros' shares was also the direct result of the truth about Defendants' misrepresentations and omissions being revealed to the market.

DEFENDANTS ACTED WITH SCIENTER

124. The Individual Defendants had significant motive and opportunity to misrepresent the sufficiency of Dutch Bros' pricing, margins, sales, and earnings during the Class Period so that they could sell significant amounts of their personal holdings of Dutch Bros stock while in possession of material, non-public information, which supports a strong inference of scienter.

125. Defendants also either intended to defraud investors or were severely reckless in making statements regarding the Company's business and prospects. Throughout the Class Period, Defendants repeatedly touted the sufficiency of Dutch Bros' margins and earnings to meet projections for first quarter of 2022, and downplayed and denied that rising commodities prices and inflation were not materially impacting Dutch Bros' business and financials. Defendants made these claims even though they possessed specific, contrary information establishing commodities prices were rising and that inflationary headwinds were steadily worsening with no end in sight.

I. Defendants Had Significant Motive and Opportunity to Misrepresent Dutch Bros' Business

A. The Insider Sales

126. During the Class Period, the Individual Defendants sold significant amounts of their personal holdings of Dutch Bros common stock. Not only were their stock sales suspiciously large in quantity, but they were also suspiciously timed and inconsistent with their pre- and post-Class Period trading practices. Although the Individual Defendants each entered into (and sold stock pursuant to) 10b5-1 trading plans, they did so to take advantage of an inflated stock price and at highly suspicious times—namely, *during* the Class Period. Defendant Ricci (and Chief Operating Officer Brian Maxwell) entered into his trading plan on December 7, 2021, while Defendant Jemely entered into his trading plan on December 9, 2021, just 19 and 21 days, respectively, after the beginning of the Class Period. Even more troubling, however, is that each of the Individual Defendants began selling their stock within days of the expiration of the "lock-up period" imposed under the Lock-Up Arrangements between Dutch Bros and the Underwriters of its IPO.

127. As described in Dutch Bros' Prospectus, Dutch Bros' officers and directors agreed not to sell any stock until the earlier of: "(1) the opening of trading on the third trading day immediately following the date we have publicly furnished our earnings release for the second quarter following the most recent period for which financial statements are included in this prospectus (so long as such date is at least 120 days from the date of this prospectus), or (2) 180 days from the date of this prospectus…." Because the Prospectus furnished financial statements for the second quarter of 2021 and Dutch Bros published its earnings release for the fourth quarter and fiscal year 2021 on March 1, 2022, therefore, the earliest date the Individual Defendants could possibly begin selling their Dutch Bros stock was approximately March 4, 2022.

128. On Monday March 7, 2022, the very next trading day after expiration of the lock-up period on March 4, 2022, Defendant Ricci sold 142,250 shares of Dutch Bros common stock

for profits of $6,554,795.76. Defendant Ricci then sold an additional 71,125 shares on Monday May 9, 2022 – just two days prior to the end of the Class Period when Defendants finally revealed to the market Dutch Bros' its prices were wholly insufficient to support projected margins and earnings – for profits of $3,020,706.18. Thus, during the Class Period, Defendant Ricci sold 213,375 shares for total profits of ***$9,575,501.85***.

129. According to Form 4s filed with the SEC, prior to his sales commencing on March 7, 2022, Defendant Ricci possessed approximately 2,133,794 fully vested shares of Dutch Bros common stock (266,723 of which vested on or about January 1, 2022 and 1,867,071 of which were vested following the IPO on September 17, 2021).

130. On Tuesday March 15, 2022, just six business days after the expiration of the lock-up period on March 4, 2022, Brian Maxwell sold 12,000 shares of Dutch Bros common stock for profits of $585,043.69. Brian Maxwell then sold an additional: 42,000 shares on March 29, 2022 for profits $2,676,489.81; 12,000 shares on April 12, 2022 for profits of $630,795.00; 12,000 shares on April 26, 2022 for profits of $576,725.41; and, finally, 12,000 shares on May 10, 2022 – just one day prior to the end of the Class Period – for profits of $487,600.20. Thus, during the Class Period, Brian Maxwell sold 90,000 shares for total profits of ***$4,956,654.11***.

131. According to Form 4s filed with the SEC, prior to his sales commencing on March 15, 2022, Brian Maxwell possessed approximately 800,174 fully vested shares of Dutch Bros common stock (266,723 of which vested on or about January 1, 2022 and 533,451 of which were vested following the IPO on September 17, 2021).

132. On Tuesday March 15, 2022, just six business days after the expiration of the lock-up period on March 4, 2022, Defendant Jemley sold 15,000 shares of Dutch Bros common stock for profits of $731,543.02. Defendant Jemley then sold an additional 5,000 shares on April 5, 2022

for profits of $270,398.30. Thus, during the Class Period, Defendant Jemley sold 20,000 shares for total profits of ***$1,001,941.32***.

133. According to Form 4s filed with the SEC, prior to his sales commencing on March 15, 2022, Defendant Jemley possessed approximately 932,828 fully vested shares of Dutch Bros common stock (169,603 of which vested on or about January 1, 2022 and 763,225 of which were vested following the IPO on September 17, 2021).

134. In sum, each of the Individual Defendants entered into (and sold stock pursuant to) 10b5-1 trading plans *during* the Class Period. What's more, each of the Individual Defendants began selling Dutch Bros stock within mere hours and/or days of after the lock-up period expired on or about March 4, 2022.

135. Thus, while the Individual Defendants effectuated sales pursuant to 10b5-1 trading plans during the Class Period, in each case the circumstances of those sales are sufficiently suspicious to overwhelm any inference that they were made in good faith.

II. Defendants Intended to Deceive Investors or Were Severely Reckless

A. Pre-Class Period Admissions and Contrary Evidence Support a Strong Inference of Scienter

136. By at least September 30, 2021, at the very latest, it was clear that the historically elevated inflation the U.S. and world economies had experienced since the second quarter of 2021 would not be "transitory," but would instead likely persist through the first half of 2022, as Federal Reserve Chair Powell testified. Indeed, Dutch Bros' September 2021 Prospectus explicitly recognized that "[i]ncreases in the cost of dairy products and other commodities, such as petroleum which in turn may increase the cost of our packing materials, or lack of availability, whether due to supply shortages, delays or interruptions in processing, or otherwise…could harm our business." What's more, on September 15, 2021, Defendant Ricci admitted that Dutch Bros was presently "challenged with commodity costs…." Thus, Defendants' admissions in this regard establish that

they were aware of, and in fact, actively tracking these costs, such that making later statements that rising inflation and commodities prices were not meaningfully impacting the Company's business or financials were either known to be false or made with reckless disregard for the truth.

137. As recounted herein, every single macroeconomic indicator pointed to the inescapability of persistently elevated inflation and commodities costs well before the commencement of the Class Period. As of the time of Defendants' November 10, 2022 statements, the CPI was up *6.2%* year-over-year in October (after rising 5.4% year-over-year in September and 5.3% year-over-year in August) while the gasoline index was up ***49.6%*** year-over-year. Similarly, the USDA's 2021 all-milk price was forecasted at $18.45 per cwt in October (up from $18.15 per cwt in September) and 2022 all-milk price was forecasted at $19.20 per cwt (up from $18.40 per cwt in September). Nevertheless, Defendants' statements during the 3Q21 Earnings Call on November 10, 2021 conveyed, and were meant to convey, Dutch Bros' imperviousness to these pressures – despite Defendants' prior, explicit acknowledgment of the importance of these pressures to the Company's business and Defendant Ricci's recognition that rising commodities costs were already 'challenging' that business.

138. As the Class Period wore on and inflation, dairy prices, and petroleum prices all steadily rose, Defendants *continued* to make materially false and misleading statements and omissions regarding the impact rising inflation and commodities prices were having on the Company and the Company's ability to maintain projected earnings and margins under the pricing structure it implemented in November 2021, despite the ever-worsening macroeconomic conditions. On January 11, 2022, for example, Defendant Ricci was interviewed at the ICR Investor Conference and stated that Dutch Bros was still "doing pretty well on the cost of goods side" "*despite*…some inflationary pressures…." In contrast, by this point, Dutch Bros' peer and

competitor Starbucks had repeatedly warned analysts and investors that "increased supply chain costs primarily related to inflationary pressures that began the latter half of the fiscal year, will have an impact to operating margin in fiscal 2022."

139. Defendants' misstatements and omissions did the trick – the price of Dutch Bros' stock was artificially inflated and/or maintained long enough for the lock-up period to expire and the Individual Defendants to sell their Dutch Bros stock for massive profits.

B. Defendants' Class Period Statements Support a Strong Inference of Scienter

140. On March 9, 2022, Defendant Jemley made some of the more damning misstatements of the Class Period during an interview at BofA's Consumer & Retail Technology Conference when he told the interview "we're not greatly concerned about elevated energy prices and people's ability to still come and enjoy Dutch." Similarly, during his April 7, 2022 podcast interview, Defendant Ricci asserted that he "wouldn't expect us to see much of a change" in sales vis-à-vis rising fuel prices.

141. During the Company's 1Q22 Earnings Call at the end of the Class Period, however, Defendant Jemley would eventually admit that elevated "gas prices" contributed to a "lack of sales growth" in the first quarter of 2022. Shockingly, Defendant Ricci then stated that "***in mid-March when gas prices jumped the way they did, we saw an immediate flip on our daily sales…. we've done some analysis on the gas prices and influence related to our daily sales, and we believe it has influenced it.***" Thus, Defendant Ricci all but *admitted* that his statements, not even five weeks earlier, that rising fuel prices wouldn't affect sales during the April 7, 2022 podcast interview were false or misleading. If Defendant Ricci knew "immediate[ly]" "in mid-March" that rising gas prices were affecting Dutch Bros' sales, he knowingly lied during the April 7, 2022 interview when he said rising fuel prices would not impact Dutch Bros' sales.

C. CW1 Supports a Strong Inference of Scienter

142. Notably, while Defendants were downplaying and denying that skyrocketing inflation and commodities prices were meaningfully impacting Dutch Bros' business and financials, the Company was internally scrambling to address these very issues. Specifically, in or around December 2021 or in or around late 2021, CW1 and CW1's team were tasked with finding solutions to the rising cost of dairy and tightening dairy supply.

143. If, as CW1 reported, Dutch Bros was concerned about (and making operational changes to address) dairy prices in or around December/late 2021, when the price received per cwt of milk was $21.70, Defendants certainly must have been concerned about dairy prices in January, February, and March, 2022, when the price of dairy continued to increase to upwards of $25.

D. The Critical Nature of the Individual Defendants' High-Level Positions and Involvement, and Their Access to, and Knowledge of, Contradictory Information

144. As Defendants conceded both before and after the Class Period, inflationary headwinds and the rising price of commodities, particularly dairy and petroleum, are critical to Dutch Bros' pricing, margins, sales, earnings, and business in general. That the alleged misrepresentations and omissions go to the core of Dutch Bros' business and viability bolster the inference of scienter.

145. Further, Defendants were intimately involved in the Dutch Bros business and operations and have access to extensive knowledge regarding the same — information that directly contradicted their claims.

146. On March 9, 2022, moreover, when asked about Dutch Bros' pricing "in the context of your input costs going up," Defendant Ricci stated that "***[W]e're watching it every day. We're talking about it a lot….***" Thus, by Defendant Ricci's own admission, Defendants were or should

have been aware of rising commodities costs and inflation throughout the Class Period and their impact on Dutch Bros' business and financials.

147. Notably, on August 10, 2022, after the Class Period ended, Defendant Jemley conceded that inflation actually "began to show in Q2 of 2021," and the Company was only now "starting to lap the inflation."

148. Finally, the Individual Defendants were all high-level corporate insiders, each of whom — by virtue of his high-level position — directly participated in the management of the Company, was directly involved in the day-to-day operations of Dutch Bros at the highest levels, was directly or indirectly involved in the oversight or implementation of the Company's internal controls, and was privy to confidential information concerning the Company and its business, operations, practices, financial statements, and financial condition, including the misstatements alleged herein. Because of the Individual Defendants' positions, they possessed the power and authority to, and did, control and monitor the contents of Dutch Bros' SEC filings, press releases, presentations, and other public statements during the Class Period made and disseminated to investors, securities analysts, money and portfolio managers and institutional investors (*i.e.*, the market), and/or approved or ratified these statements. Defendants Ricci and Jemley signed and/or certified the Company's Class Period Form 10-Q and regularly issued releases and spoke about the Company's business and operations. Accordingly, each of the Individual Defendants bears responsibility for the accuracy of the SEC filings, press releases, and other public statements detailed herein, and is primarily liable for the false and misleading statements and omissions and wrongful conduct pleaded herein.

E. Defendant Ricci's Departure Supports Scienter

149. Not long after Defendants revealed the true extent of margin, sales, and earnings pressure rising inflation and commodities prices inflicted upon Dutch Bros' business, on

November 28, 2022, the Company filed with the SEC a current report on Form 8-K that included a press release announcing that Christine Barone "will be appointed to serve as President of the Company, reporting to Joth Ricci, who will continue to serve as Chief Executive Officer." Thus, effectively, Barone assumed Defendant Ricci's prior role as "President" of Dutch Bros. Barone previously served as an executive and Vice President of Starbucks for approximately five years. The Release quoted Defendant Ricci as stating that Barone is an "industry leader known for her incredible strategic and operational skills" and that, "[a]s we look to the next phase of our brand story, we're committed to bringing in best-in-class leadership to help us scale and grow."

150. Thereafter, on August 8, 2023, the Company filed with the SEC a current report on Form 8-K. The Form 8-K announced that, "[o]n August 4, 2023, the Company's Board of Directors approved a transition plan (the Transition Plan) whereby the Board plans to appoint Christine Barone, President of the Company, to the role of Chief Executive Officer and President in concert with Joth Ricci's planned January 2024 departure from his current role as Chief Executive Officer of the Company."

F. Corporate Scienter

151. The Company is liable for the acts of the Individual Defendants and its employees under the doctrine of *respondeat superior* and common law principles of agency because all the wrongful acts complained of herein were carried out within the scope of their employment.

152. The scienter of the Individual Defendants and other employees and agents of the Company is similarly imputed to the Company under *respondeat superior* and agency principles.

PSLRA STATUTORY SAFE HARBOR DOES NOT APPLY

153. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to the scheme or any of the allegedly materially false and misleading statements pleaded herein. Many of the statements were regarding present or past events or were

mixed statements of past/present and future conditions — and thus were not forward-looking. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements.

154. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, the Individual Defendants are liable for those false forward-looking statements because, at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer who knew that those statements were false when made.

THE PRESUMPTION OF RELIANCE

155. Plaintiff and other members of the Class are entitled to a presumption of reliance on Defendants' material misrepresentations, deceptive devices, and fraudulent scheme pursuant to the fraud-on-the-market doctrine because, among other things, during the Class Period:

(a) Defendants made public misrepresentations or failed to disclose material facts during the Class Period;

(b) The misrepresentations and omissions were material;

(c) Dutch Bros' securities were actively traded in an efficient market on the NYSE;

(d) Dutch Bros' securities were liquid and traded with moderate to high weekly volumes;

(e) As a regulated issuer, Dutch Bros filed periodic public reports with the SEC;

(f) Dutch Bros regularly communicated with public investors by means of established market communication mechanisms, including through regular dissemination of press releases on the major news wire services and through other wide-ranging public disclosures, such as communications with the financial press, securities analysts, and other similar reporting services;

(g) The market reacted promptly to public information disseminated by Dutch Bros;

(h) Dutch Bros was covered by securities analysts employed by major brokerage firms who wrote reports that were distributed to the sales force and certain customers of their respective firms. These reports were publicly available and entered the public marketplace;

(i) The material misrepresentations and omissions alleged herein would tend to induce a reasonable investor to misjudge the value of Dutch Bros common stock; and

(j) Without knowledge of the misrepresented or omitted material facts alleged herein, Plaintiff and other members of the Class purchased or acquired Dutch Bros securities between the time Defendants misrepresented or failed to disclose material facts and the time the true facts were disclosed.

156. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

157. Alternatively, Defendants corrupted the market for Dutch Bros securities through a course of conduct that misled the market as to the value of Dutch Bros securities. To the extent that these Defendants disrupted the integrity of the market for Dutch Bros securities, Plaintiff and members of the Class are not required to provide further proof of reliance, pursuant to the Supreme Court's decision in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128, 153 (1972).

CONTROL PERSON ALLEGATIONS

158. The Individual Defendants, by virtue of their high-level and controlling positions at Dutch Bros, directly participated in the management of the Company, were directly involved in the day-to-day operations of the Company at the highest levels and were privy to confidential proprietary information about the Company, its business, operations, internal controls, growth, financial statements, and financial condition as alleged herein. As set forth below, the materially misstated information conveyed to the public was the result of the actions, individually and in concert, of these individuals.

159. Defendant Ricci, in his role as CEO, and Defendants Jemley and Maxwell, in their roles as executive officers, were participants in a fraudulent scheme and course of conduct that operated as a fraud or deceit on those who purchased or otherwise acquired Dutch Bros common stock during the Class Period. The scheme/course of conduct deceived the investing public regarding Dutch Bros' business, operations, financial condition, and the intrinsic value of Dutch Bros' common stock, and caused Plaintiff and other members of the Class to purchase or otherwise acquire Dutch Bros common stock at artificially inflated prices.

160. The Individual Defendants each had a duty to disseminate prompt, accurate, and truthful information with respect to the Company's business, operations, internal controls, growth, and financial condition, so that the market price of Dutch Bros' publicly traded common stock would be based on accurate information. The Individual Defendants each violated these requirements and obligations during the Class Period. Defendants were also under a continuing duty to update and/or correct any false or misleading statements alleged herein.

161. The Individual Defendants, because of their positions of control and authority, were able to and did control the content of the Company's SEC filings, press releases, and other public statements issued by or on behalf of Dutch Bros during the Class Period. Each would have been provided with copies of at least some of the statements made in the SEC filings other public statements at issue in this action before they were issued to the public and would have had the ability to prevent their issuance or cause them to be corrected. Accordingly, the Individual Defendants are responsible for the accuracy of the public statements alleged herein.

CLASS ACTION ALLEGATIONS

162. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class consisting of all persons who purchased or otherwise acquired publicly traded Dutch Bros securities between November 10, 2021 and May

11, 2022, inclusive. Excluded from the Class are Defendants, the officers and directors of Dutch Bros and its subsidiaries, members of the Individual Defendants' immediate families and their legal representatives, heirs, successors or assigns and any entity in which Defendants have or had a controlling interest.

163. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Dutch Bros securities were actively traded on the NYSE. While the exact number of Class members is unknown to Plaintiff at this time and can be ascertained only through appropriate discovery, Plaintiff believes that there are hundreds, if not thousands of members in the proposed Class. As of November 10, 2021, Dutch Bros had approximately 34,431,806 shares of Class A common stock outstanding. Record owners and the other Class Members may be identified from records maintained by Dutch Bros and/or its transfer agents and may be notified on the pendency of this Action by using a form of notice similar to that customarily used in securities class actions.

164. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' misrepresentations and wrongful conduct in violation of federal law that is complained of herein.

165. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

166. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether the Exchange Act was violated by Defendants' misrepresentations and omissions, acts, deceptive devices, and fraudulent scheme as alleged herein;

(b) whether statements made by Defendants to the investing public during the Class Period misrepresented material facts about the financial condition, business, operations, and management of the Company;

(c) whether Defendants caused the Company to issue materially false and misleading filings during the Class Period;

(d) whether Defendants acted knowingly, recklessly, or negligently in issuing materially false and misleading filings;

(e) whether the prices of Dutch Bros securities during the Class Period were artificially inflated because of Defendants' conduct complained of herein; and

(f) whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

167. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

CLAIMS FOR RELIEF

COUNT I
For Violations of Section 10(b) of the Exchange Act and Rule 10b-5(b) Promulgated Thereunder Against All Defendants

168. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

169. During the Class Period, Defendants, individually and in concert, directly or indirectly, violated Rule 10b-5(b) in that they made or approved the false statements specified above, which they knew or were severely reckless in not knowing were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

170. Defendants acted with scienter in that they knew or were severely reckless in not knowing that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or made to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the securities laws. These Defendants by virtue of their receipt of information reflecting the true facts of the Company, their control over, and/or receipt and/or modification of Dutch Bros' allegedly materially misleading statements, and/or their associations with the Company that made them privy to confidential proprietary information concerning the Company, participated in the fraudulent conduct alleged herein.

171. Individual Defendants, who are or were the senior officers and/or directors of the Company, had actual knowledge of the material omissions and/or the falsity of the material statements set forth above, and intended to deceive Plaintiff and the other members of the Class, or, in the alternative, acted with severe reckless disregard for the truth when they failed to ascertain and disclose the true facts in the statements made by them or other Dutch Bros personnel to members of the investing public, including Plaintiff and the Class.

172. As a result of the foregoing, the market price of Dutch Bros securities was artificially inflated during the Class Period. Plaintiff and the other members of the Class relied on the statements described above and/or the integrity of the market price of Dutch Bros securities during the Class Period in purchasing Dutch Bros securities at prices that were artificially inflated as a result of Defendants' false and misleading statements.

173. Had Plaintiff and the other members of the Class been aware that the market price of Dutch Bros' securities had been artificially and falsely inflated by Defendants' misleading

statements and by the material adverse information which Defendants did not disclose, they would not have purchased Dutch Bros' securities at such artificially inflated prices, if at all.

174. As a result of the wrongful conduct alleged herein, Plaintiff and other members of the Class have suffered damages in an amount to be established at trial.

175. By reason of the foregoing, Defendants have violated Section 10(b) of the 1934 Act and Rule 10b-5(b) promulgated thereunder and are liable to the Plaintiff and the other members of the Class for substantial damages which they suffered in connection with their purchase of Dutch Bros' securities during the Class Period.

COUNT II
Violations of Section 20(a) of the Exchange Act
Against the Individual Defendants

176. Plaintiff repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

177. During the Class Period, the Individual Defendants participated in the operation and management of the Company, and conducted and participated, directly and indirectly, in the conduct of Dutch Bros' business affairs. Because of their senior positions, they knew the adverse non-public information about the Company's false financial statements.

178. As officers of a publicly owned company, Individual Defendants had a duty to disseminate accurate and truthful information with respect to Dutch Bros' financial condition and results of operations, and to correct promptly any public statements issued by the Company which had become materially false or misleading.

179. Because of their positions of control and authority as senior officers, Individual Defendants were able to, and did, control the contents of the various reports, press releases, statements to the media, and public filings which Dutch Bros disseminated in the marketplace during the Class Period concerning the Company's results of operations. Throughout the Class

Period, Individual Defendants exercised their power and authority to cause the Company to engage in the wrongful acts complained of herein. Individual Defendants, therefore, were "controlling persons" of the Company within the meaning of Section 20(a) of the Exchange Act. In this capacity, they participated in the unlawful conduct alleged which artificially inflated the market price of Dutch Bros securities.

180. Due to the above conduct, Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act for the violations committed by the Company.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and the Class, pray for judgment and relief as follows:

(a) declaring this action to be a proper class action, designating Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure and designating Plaintiff's counsel as Class Counsel;

(b) awarding damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, together with interest thereon;

(c) awarding Plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding Plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: August 31, 2023

Respectfully submitted,

KAHN SWICK & FOTI, LLC

/s/ Kim E. Miller

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Counsel for Lead Plaintiff Douglas Rein and Lead Counsel for the Class

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on August 31, 2023, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send a Notice of Electronic Filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to non-CM/ECF participants indicated on the attached Manual Notice List.

/s/ Kim E. Miller
Kim E. Miller